

47. (New) The deck system of Claim 46, wherein said first facing means and said second facing means and each of said balusters are coated with a surface finish for presenting a selected exterior color.
48. (New) The deck system of Claim 46, wherein each of said first facing means, second facing means, and each of said balusters is coated with a surface finish including powder paint.

### **REMARKS**

1. **Allowable Subject Matter**

In paragraphs 11-12 of the Office Action, titled "Allowable Subject Matter," the Office Action indicates Claims 11, 15 and 17 are allowable if written in independent form including the limitations of the base claim and any intervening claims. The Office Action states that these claims are allowable because "the prior art of record fails to teach the use of first and second facing formed from metal." Claim 11 is therefore rewritten as new Claim 33 with the limitations of Claim 1, and with the additional limitations of second facing means (Claim 9), and first and second facing means being formed from metal (Claim 11).

Claim 15, which depends from Claim 11 and adds a fastening means limitation, is rewritten as new Claim 36 depending from new Claim 33. Claim 17, which also depends from Claim 11, is rewritten as new Claim 37, depending from new Claim 33. Several clarifying amendments have been made to these claims for better understanding of the claim elements. It is believed that the amendments place Claims 33, 36 and 37 in condition for allowance.

It should be noted that Claims 34 and 35 depend from Claim 33 and include the surface finish limitations that were included in Claim 11, but were not mentioned by the Office Action as

necessary for allowance. Because Claim 33 is allowable it is believed that new dependent Claims 34 and 35 are also allowable.

2. MILES

The Office Action first rejects claims 1, 4, 5, 12-14 and 16 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,229,433 to MILES. The MILES patent, however, fails to describe the application of metal facing to cover the outer edge of a deck system, as claimed in the above-referenced claims.

Rather, MILES is concerned with applying a metal overlay to the top surface of wooden aircraft carrier flight decks, to provide greater resistance to the impact of landing aircraft and effects of weather.

In FIG. 1 of MILES, for example, flat, thick metal plates (called "facing") are laid down on top of a thick layer of adhesive, which in turn lies on top of layered plywood panels. FIG. 1 of MILES and the related discussion do not involve covering an exposed outer edge of the flight deck.

In FIGS. 3 and 4 of MILES, the same concept of metal plates is used, except that the metal plates are fitted to individual plywood panels that form the top layer of the flight deck. This is accomplished by forming a flange that hooks around underneath two opposing sides of each relatively thin plywood panel to secure the metal panel on top of the individual piece of plywood. In other words, FIGS. 3 and 4 describe only an attachment means for fixing metal panels to the top wooden panels of a flight deck. Beneath this top layer, the flight deck consists of further layers of plywood paneling and adhesive, and the metal deck substructure. FIGS. 3 and 4 fail to describe the application of a facing to the outer edge of the flight deck, including the further plywood layers below the top layer, and the metal substructure. The problem to be solved

in MILES did not involve the exposure of the deck's outer edge, including the cut ends of the plywood planking, and the substructure below. Rather, MILES was concerned with covering the top surface of the deck.

The present deck system is concerned not with covering the top surface of the deck, or with covering the individual deck floor members, but with providing a covering for the exposed outer edge of the deck, including the cut ends of the floor members. A problem sought to be solved by the present deck system is the exposure of the cut ends of floor boards, particularly composite floor board members, which are frequently not solid but have hollow areas and do not always produce a clean cut. At the same time, a further issue is the need to cover the exposed deck support members below the deck floor members.

Applicant respectfully submits that Claim 1, as amended, and Claim 5 and Claim 12 are in a condition for allowance.

3. MILES in view of DAHL

Claims 2 and 3 are then rejected by the Office Action under 35 U.S. C. §103(a) as being unpatentable over MILES in view of DAHL, U.S. Patent No. 6,061, 991.

As noted above, MILES does not claim a deck system for covering the outer edge of the deck with a facing. There is no suggestion in MILES of using a wood composite material in the deck floor members, nor is there any suggestion of the problem of applying a facing to cover the outer edge of the floor members of a deck.

While DAHL does include the use of wood composite material for deck components, DAHL also fails to describe a deck system that includes facing for covering the outer edge, including the cut ends, of composite wood floor board members.

In Claims 2 and 3, the present deck system is concerned with applying facing to the outer edge of composite floor board members used in a deck. There is no suggestion of this combination of elements in either MILES or DAHL. It is believed that one of ordinary skill in the art could not have apprehended the present deck system from MILES and DAHL, in large part because MILES does not describe an outer edge facing, or the problem of covering exposed outer edge including the cut ends of floor board members.

While Applicant has cancelled Claims 2 and 3, it has incorporated the limitation of Claim 2 into Claim 1, and believes that Claim 1 with this limitation is in condition for allowance.

4. MILES in view of TURNBULL

The Office Action next rejects claims 6, 7, 9 and 10 for lack of obviousness over U.S. Patent No. 3,229,433 to MILES in view of U.S. Patent No. 4,907,387 to TURNBULL. As is evident in FIG. 1 of TURNBULL, this patent also fails to describe a facing that covers the outer edge of a deck platform, including the cut edges of the deck members, as well as underlying support members. TURNBULL is concerned with a completely different problem, that of placing a surface on the top of deck members to protect the top surface from wear and tear from persons walking on the deck, and weather, and provide an anti-slip surface. The "channel members" of TURNBULL are placed on individual planks of the deck and fit over the top and sides of individual planks to grip the side surfaces and secure each channel member to its respective plank. See TURNBULL, Col. 2, lines 43-51. While TURNBULL does discuss applying a grit or sand finish to the top surface of individual deck boards or planks, to form an anti-slip surface for persons walking on the deck, at no point does TURNBULL mention or even suggest application of a surface finish to the outer edge of a deck, including the cut edges, or to a facing covering the

outer edge. There also is no suggestion of outer edge facings, or the surface finish of such facings, in MILES, as noted above.

It is respectfully submitted that neither MILES nor TURNBULL deals with the problem of outer edge facings, or the issue of how best to cover such facings when the deck is formed from wood composite material.

Additionally, as to the aforementioned claims, and claim 8, while applying certain surface finishes to metal may be known, Applicant is not aware of the combination of applying such surface finishes to metal facing applied to deck edges in the context of the present deck system prior to his application.

5. MILES in view of ANDRES; MILES in view of DAHL

The Office Action rejects Claims 18-20 and 22-29 under 35 U.S.C. §103(a) as unpatentable over MILES in view of U.S. Patent No. 5,713,171 to ANDRES. The Office Action also rejects Claims 21 and 30-32 under 35 U.S.C. §103(a) over MILES in view of DAHL.

Claims 18-20 and 22-29, and 21, and 30-32, have been cancelled and represented as new Claims 38-48. It is believed these new claims are in condition for allowance. Neither MILES or ANDRES give any suggestion of the combination described in new Claims 38-48, a deck system including wood composite floor members, metal facing of the deck's outer edge, and a railing system that includes metal cross members or balusters. DAHL also gives no suggestion of this combination. Such a deck system, which is substantially formed of wood composite and metal components, presents special advantages in terms of weather- and wear-resistance. Additionally, the use of metal facing and metal railing cross members or balusters provides special advantages in coordination of surface finish and color and design elements of the deck system. In view of these considerations, Applicant submits that new Claims 38-48 are in a condition for allowance.

Applicant is enclosing a check in the amount of \$460.00, to cover the 3 month extension of time. The Commissioner is hereby authorized to charge any additional fees to the Holme Roberts & Owen, LLP deposit account no. 08-2665.

Respectfully Submitted,  
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